

**TENTATIVE RULINGS for CIVIL LAW and MOTION**  
**August 13, 2010**

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at [www.yolo.courts.ca.gov](http://www.yolo.courts.ca.gov). If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941  
Department Fourteen: (530) 406-6848

## TENTATIVE RULING

**Case: Lambert v. Valenzuela**  
**Case No. CV CV 09-2827**

**Hearing Date:**            **August 13, 2010**                            **Department Fourteen**                            **9:00 a.m.**

Plaintiff's request for judicial notice is **DENIED**. The court may not take judicial notice of allegations in declarations found in court records. (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4<sup>th</sup> 875, 882-883.) The proof of service filed on July 21, 2008, in case no. CV G 08-1347 is not relevant to the question of whether defendant was in Woodland during the period October 15, 2009, through mid-February, 2010.

Defendant's motion to set aside and vacate the entry of default against him is **GRANTED**. (Code Civ. Proc., §§ 473, subd. (b) and 473.5.) Defendant shall file his answer to the complaint by August 23, 2010.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

## TENTATIVE RULING

**Case:** Coast Transit Refrigeration, Inc. v. Property Equities, LLC  
**Case No.** CV CV 09-1563

**Hearing Date:**            **August 13, 2010**                            **Department Fifteen**                            **9:00 a.m.**

Plaintiff/Cross-Defendants' demurrer to Defendant/Cross-Complainant cross-complaint is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) The cross-complainant states sufficient facts to state the causes of action for fraud, breach of contract, and indemnity. The sole issue raised by a general demurrer is whether the facts pleaded state a valid cause of action, not whether they are true. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)

Plaintiff/Cross-Defendants' motion to strike is **DENIED**. (Code Civ. Proc., § 436; Civ. Code, § 3294.) The cross-complaint states sufficient facts to state a cause of action for fraud and thus, punitive damages.

Plaintiff/Cross-Defendants' request for judicial notice is **GRANTED**. (Evid. Code, § 452.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

#### **TENTATIVE RULING**

**Case:** **Miyashiro v. Lewis**

**Case No. CV PM 10-108**

**Hearing Date:** **August 13, 2010** **Department Fifteen** **9:00 a.m.**

Defendant Elizabeth Lewis' Motion For Change of Venue and Request for Reimbursement and Transfer Fee is **DENIED**. (Code Civ. Proc., § 395, subd. (a); *Rains v. Diamond Match Co.* (1915) 171 Cal.326, 327-328.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, is required.

#### **TENTATIVE RULING**

**Case:** **Pacific Bell Directory v. Jafarian et al.**

**Case No. CV G 06-1990**

**Hearing Date:** **August 13, 2010** **Department Fifteen** **9:00 a.m.**

Pacific Bell Directory's motion for terminating sanctions is **DENIED WITHOUT PREJUDICE**. (Code Civ. Proc., § 2023.030 and 2025.450, subd. (d).) The Court finds that terminating sanctions are not appropriate under the circumstances presented. This case does not involve a persistent disobedience of court orders. To the extent plaintiff's motion is based on defendant's failure to appear for the December 19, 2009, deposition, the Court has already sanctioned defendant for this conduct. The Court will not sanction defendant a second time for the same offense.

The request for \$1,290.00 in monetary sanctions against defendant is **GRANTED**. (Code Civ. Proc., § 2025.450, subd. (d).)

Plaintiff shall serve defendant with a copy of the Court's ruling by no later than August 16, 2010.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

### **TENTATIVE RULING**

**Case:** **Pinewood Court Apartments v. USA Properties Fund, Inc.**  
**Case No. CV CV 08-2988**

**Hearing Date:** **August 13, 2010** **Department Fifteen** **9:00 a.m.**

CJS Plumbing, Inc.'s motion to compel Tyco Fire Suppression & Building Products to produce further responses to requests for production of documents is **DENIED**. CJS Plumbing, Inc. failed to file a meet-and-confer declaration. (Code Civ. Proc., §§ 2016.040 and 2031.310, subd. (b)(2).)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

### **TENTATIVE RULING**

**Case:** **Target National Bank v. Jones**  
**Case No. CV G 10-391**

**Hearing Date:** **August 13, 2010** **Department Fifteen** **9:00 a.m.**

Lori E. Jones' motion to set aside and vacate the entry of default and default judgment against her is **DENIED WITHOUT PREJUDICE**. Defendant does not deny that the summons and complaint were served on an adult male at defendant's residence on March 2, 2010. Defendant also does not deny receipt of a copy of the summons and complaint in the mail. Defendant states that on March 2, 2010, she was away from her residence, but she does not state when she received actual notice of the summons and complaint. If, for example, defendant returned to her residence and was given a copy of the summons and complaint on March 9, 2010, there is no reason why she could not have prepared an answer by April 12, 2010, the last day for her to file her answer. Based on the facts stated in defendant's declaration, the Court cannot conclude that defendant did not receive actual notice of the summons and complaint in time to defend the action. (Code Civ. Proc., § 473.5.) There are insufficient facts to establish "mistake, inadvertence, surprise or excusable neglect." (Code Civ. Proc., § 473, subd. (b).)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

### **TENTATIVE RULING**

**Case:** **Vandyke v. Pardee**  
**Case No. CV CV 10-785**

**Hearing Date:** **August 13, 2010** **Department Fifteen** **9:00 a.m.**

Defendant's demurrer to the first cause of action for breach of contract and the second cause of action for common counts alleged in Plaintiff's complaint is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) The complaint fails to state facts sufficient to show that Plaintiff Larry Van Dyke is the real party in interest. (Code Civ. Proc., §§ 367 *et seq.*)

Further, the complaint fails to state facts sufficient to state a cause of action for breach of contract or a cause of action for common counts. To state a cause of action for breach of contract, Plaintiff must allege: (1) the existence of a contract; (2) his performance of the contract or excuse for nonperformance; (3) breach; and (4) the resulting damage. (*Otworth v. Southern Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 459.) If the action is based on alleged breach of a written contract, the terms must be set out verbatim in the body of the complaint or a copy of the written agreement must be attached and incorporated by reference. (*Ibid.*) Plaintiff failed to attach a copy of the contract or to set out the terms of the contract in the complaint.

To state a cause of action for common counts Plaintiff must allege: (1) indebtedness; (2) consideration; and (3) nonpayment. (*Allen v. Powell* (1967) 248 Cal.App.2d 502, 510.) A cause of action for common counts will not lie where the damages sought are for the breach of an express obligation to do things other than to pay money. (*Weitzenkorn v. Lesser* (1953) 40 Cal.2d 778, 793.) Plaintiff's cause of action for common counts is based on damages sought for breach of an express obligation to do things other than to pay money on an open book account. (Complaint ¶¶ BC-1-CC-4.) Thus, plaintiff fails to state sufficient facts to state a cause of action for common counts.

Plaintiff shall file a first amended complaint by **September 27, 2010**.

Defendant shall serve a copy of this tentative ruling on Plaintiff by **August 16, 2010**.

If no hearing is requested, the tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.